

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

<b>DALE DEAN GOINS,</b>	:	<b>PRISONER HABEAS CORPUS</b>
<b>GDC ID # 398603,</b>	:	<b>28 U.S.C. § 2254</b>
<b>Petitioner,</b>	:	
	:	
<b>v.</b>	:	
	:	
<b>UNNAMED,</b>	:	<b>CIVIL ACTION NO.</b>
<b>Respondent.</b>	:	<b>1:13-CV-4223-TWT-AJB</b>

**UNITED STATES MAGISTRATE JUDGE’S  
FINAL REPORT AND RECOMMENDATION**

Petitioner, Dale Dean Goins, confined in Johnson State Prison in Wrightsville, Georgia, has submitted a document intended for the United States Court of Appeals for the Eleventh Circuit, namely, an application for leave to file a second or successive habeas corpus petition by a prisoner in state custody. [Doc. 1.]

“Before a second or successive [habeas petition] is filed in the district court, the [petitioner] shall move in the appropriate court of appeals for an order authorizing the district court to consider the [petition].” 28 U.S.C. § 2244(b)(3)(A). Petitioner has incorrectly submitted his application to the District Court instead of the Court of Appeals. It does not appear that Petitioner intended to seek any relief from the District Court at this time.

A civil action or appeal may be transferred from a court lacking jurisdiction to

the proper court “if it is in the interest of justice . . . .” 28 U.S.C. § 1631. However, the Eleventh Circuit has questioned whether § 1631 authorizes a district court to transfer an application for leave to file a second or successive habeas petition to a court of appeals. *See Guenther v. Holt*, 173 F.3d 1328, 1330-31 & n.4 (11<sup>th</sup> Cir. 1999). Accordingly, the District Court should dismiss this action and direct Petitioner to submit his application to the Court of Appeals.<sup>1</sup>

For the reasons stated above, **IT IS RECOMMENDED** that (1) this action be **DISMISSED**, and (2) Petitioner be directed to submit his application for leave to file a second or successive habeas petition to the Court of Appeals.

The Clerk is **DIRECTED** to terminate the reference to the undersigned.

**IT IS SO RECOMMENDED and DIRECTED**, this 14th day of January, 2014.



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**ALAN J. BAVERMAN**  
**UNITED STATES MAGISTRATE JUDGE**

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<sup>1</sup> Petitioner need not await a final order from the District Court to submit his application to the Court of Appeals.